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83-13-I
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October 3, 1983

Mr. Dennis R. Lunderville
Director
Air Resources Agency
Health and Welfare Building
Hazen Drive
Concord, NH 03301

Re: Permitting Portable Devices

Dear Mr. Lunderville:

By memorandum dated February 1, 1983, you requested our advice on the question of whether the Air Resources Agency is empowered to issue a single temporary permit or final permit (permit to operate) which would authorize the operation of a device which contributes to air pollution at different or multiple locations within the State. I initially responded to that request in a letter to you dated April 26, 1983. This letter clarifies and expands on the April 26 letter, without altering its conclusions.

Your question related to permits for an asphalt drum mix plant, which can be readily moved and installed from one construction site to another. Over the course of our several discussions on this matter we agreed that your precise inquiry is whether multiple permits, each for a different location, may be issued for a single device. It is our conclusion that the Agency may simultaneously issue multiple temporary permits for a single device, provided that a separate temporary permit is required for each different location so permitted. Only one final permit may be issued for a single device, however, and it may only be issued for one location.



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RSA 125-C:11(I) (Supp. 1981) prohibits the construction, installation, or operation of devices contributing to air pollution unless the devices have been permitted by the Air Resources Agency. Temporary permits are issued prior to the construction or installation of a device. Final permits (defined as permits to operate in Rule Air 602.02(b)) are issued when the device becomes operational. RSA 125-C:11(II, III) (Supp. 1981).

Final permits may be issued only after the Director of the Agency finds that the device meets applicable air quality standards and rules. To make this determination, the Director may require that the device undergo operational testing before the device is permitted. RSA 125-C:11 (III). Thus, although temporary permits must issue prior to the construction or installation of a device, final permits may not be issued until a device is installed and operational. Rule Air 605.01(b)(1) assumes that final permits may only be issued after a device is fully installed, by requiring that applications for final permits include a notice of completion of construction of the device. Therefore, because a device may be complete and in operation at only one location at any given time, the Agency may issue a final permit for a device only for the location where the device is constructed and operated.¹

Nothing in RSA ch. 125-C and the rules promulgated thereunder, however, prohibits the Agency from issuing temporary permits for one device at various locations. By the very terms of the temporary permit requirement, such permits are required prior to the construction or installation of a device. RSA 125-C:11 (II); Air 602.01(a). These rules do not prevent a company from filing more than one application for a single device. In fact, it may be necessary for a company to apply for temporary permits for multiple locations for a single device. The situation prompting your inquiry illustrates this point. There, a construction company bid on several construction jobs in the State, and it sought the Agency's approval of a temporary permit for its asphalt mixer for each of those sites. If the company must wait until the jobs were awarded before applying, the start of construction could be delayed until the Agency has acted on the particular application(s). In light of this rationale and the flexibility of RSA 125-C:11 and your rules, it is our conclusion you may issue temporary permits for a single device for multiple locations.

¹ This conclusion is consistent with Eve Oyer's letter to you dated September 28, 1982. Ms. Oyer there stated that a final permit for a device which was, but is no longer, installed and operational may not be renewed. (A copy of that letter is attached.)

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Please note that separate temporary permits will be necessary for each site. Air 605.01(a) requires an application for a temporary permit for each device, and we infer from this requirement that each separate location for a particular device also requires an application and permit. Without this requirement the Agency could not determine whether the operation of the device will comply with the State Implementation Plan and comport with the air quality standards in a particular area, which determination is required by RSA 125-C:11(II), Rule Air 605.01 and Part Air 606.

The above conclusions relative to temporary permits are based on rules currently in force. If the particular circumstances which prompted your question are not adequately dealt with by the present rules, you may consider recommending to the Air Resources Commission that it amend these rules. The Agency also has the flexibility to impose appropriate permit conditions to avoid potential problems raised by issuing multiple temporary permits for one device. RSA 125-C:11 (II, III). Through permit conditions the Agency may ensure that the process for applying for multiple permits is not abused and that air quality standards are maintained.

Please let me know if you have any further questions on this matter.

Yours truly,



George Dana Bisbee
Attorney
Environmental Protection Division

GDB/mlw
Attachment

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